

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Barre-Ellis and Del Amo-Ellis Transmission Right of Way to Park Edison LLC.

Application 02-04-048  
(Filed April 26, 2002)

**O P I N I O N**

**Summary**

Southern California Edison Company (SCE) is authorized to lease to Park Edison, LLC (Park Edison) a site on SCE's Barre-Ellis and Del Amo-Ellis transmission right of way in the City of Stanton.

**Background**

SCE seeks Commission authorization under Pub. Util. Code § 851 to lease to Park Edison a 3.73-acre site located on a portion of SCE's Barre-Ellis and Del Amo-Ellis transmission right of way in the City of Stanton. The right of way is part of SCE's Barre-Ellis and Del Amo-Ellis 220-kilovolt system and includes Commission-jurisdictional facilities.

Park Edison, a California limited liability company, is a property management, construction services and equipment rental company.<sup>1</sup> Park

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<sup>1</sup> The application states that Park Edison is not related to SCE, Edison International, or their affiliates.

Edison would construct an industrial office and warehouse complex on the site. SCE would continue to own and operate its transmission and distribution facilities, and would retain unobstructed access to the site. Lease revenues would be shared with SCE's ratepayers as described in the Revenue Treatment section below.

On November 1, 2001, SCE and Park Edison executed an option agreement fully defining the terms of the proposed lease and giving Park Edison 30 days after the Commission's approval to either accept or reject the lease together with any conditions the Commission may impose.

#### **A. Lease Terms**

The initial term of the lease is 45 years commencing on the date Park Edison exercises the option, and Park Edison may renew it for up to two additional ten-year terms. The base rent is \$30,000 for the first year, escalating to \$125,000 in the fifteenth year. The base rent will be further adjusted at the end of the fifteenth and thirtieth years of the lease, and upon the exercise of each renewal option, to the then current fair rental value. In no event, however, will the adjusted base rent be less than the base rent payable immediately prior to the adjustment, or greater than the base rent payable immediately prior to the adjustment increased by 5% per year compounded annually for 15 years. SCE is to pay all real property taxes assessed against the property by the State Board of Equalization, and Park Edison is to pay all personal property taxes, general and special assessments, and other charges assessed against the property and improvements, other than those assessed against SCE-owned equipment or improvements.

Terms of the lease provide that Park Edison's use must be consistent with SCE's use for its power lines and equipment, and SCE retains the right to

access and use the site as necessary to operate and service its equipment and comply with Commission orders and requirements. Park Edison may not allow any hazardous substances on the site, and must maintain minimum specified vertical and horizontal clearances from SCE's towers, poles, pole anchors, and overhead conductors. Park Edison is required to maintain workers' compensation and insurance of various types at specified levels for itself and its contractors and subcontractors, and to defend and indemnify SCE against all liability and damage claims except those caused by SCE's own negligence or willful misconduct. Park Edison may obtain any permits or zoning changes that may be required for its initial intended use of the property, and SCE retains the right to approve Park Edison's construction and improvements. SCE retains the right to enter the property for purposes of protecting, operating, maintaining, or reconstructing its facilities; the right to condemnation of all or part of the leasehold through its exercise of eminent domain should that become necessary; and additional rights in case of emergencies.

#### **B. Determination of Best Secondary Use**

The primary use of facilities located on the site is the transmission and distribution of electricity to users in Orange County. SCE's aboveground lines crossing the site, and their associated restrictions and height clearances, limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that an industrial office and warehouse facility offers that highest potential revenue. To evaluate the rental value of this particular site, SCE analyzed the rent paid for comparable industrial office and warehouse facilities in Orange County as a function of the effective gross income of the facilities. SCE believes that the base

rent it will receive falls within the acceptable market range established by its analysis, and is in line with revenues it receives in other Commission-approved lease transactions.

### **C. Lessee Selection**

SCE states that it selected Park Edison as the developer because of the site's proposed use, Park Edison's financial offer, and the background and financial position of Park Edison's members. According to SCE, Park Edison is a property management, construction services and equipment rental company which began business in 1996. Through its construction services division, Park Edison has developed and constructed numerous industrial, commercial, and residential projects in Southern California under various joint ventures. Park Edison's management team specializes in acquisition, development, and property management of industrial projects like the facility proposed here.

### **D. CEQA Considerations**

SCE's application indicated that this would be a discretionary project under the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000, et seq.) for the City of Stanton. SCE's proposed lease is also a discretionary project for the Commission. The City of Stanton is the lead agency for the project under CEQA, and the Commission is a responsible agency. On June 24, 2002, SCE filed a supplement to the application forwarding a series of environmental review documents prepared by the City. In March 2002, the City Planning Division released its Initial Study and Negative Declaration and posted it for public comment. A proposed final Negative Declaration finding that the project could not have a significant effect on the environment was made available to the public in April 2002. On May 1, 2002, the City of Stanton Planning Commission adopted the final Negative Declaration and approved the

project, finding that the project will not have a significant effect on the environment. Mitigation measures were not a condition of approval of the Negative Declaration. However, that document does note that existing local standards pertaining to building codes and subdivisions must be applied to the project as a condition of approval. On May 7, 2002, the City filed a Notice of Determination with the Clerk-Recorder of Orange County in compliance with Sections 21108 and 21152 of the Public Resources Code.

As required by our role as a responsible agency,<sup>2</sup> we have reviewed and considered the City's Negative Declaration in making our decision, and find it adequate for our decision-making purposes. As the City points out, this is an industrial development on a site surrounded by other industrial uses that have been in place for many years. According to the Negative Declaration, the project's 10 industrial buildings are consistent with the site's M-1 (Light Industrial) zoning and the Industrial land use designation of the City's General Plan, and any anticipated impacts were addressed previously with the Environmental Impact Report adopted with that General Plan. We find that the City reasonably concluded that the project will not have a significant effect on the environment and we adopt that finding for purposes of our approval. We similarly adopt the City's requirement that local building code and subdivision standards are a condition of approval.

#### **E. Revenue Treatment**

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In Decision (D.) 99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The

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<sup>2</sup> CEQA Guidelines, Section 15050(b).

sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees, or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is “passive” for sharing purposes.<sup>3</sup>

## Discussion

Pub. Util. Code § 851 provides that no public utility “shall ... lease ... [property] necessary or useful in the performance of its duties to the public ... without first having secured from the [C]ommission an order authorizing it so to do.” The Commission’s role in examining transactions subject to Section 851 is the protection of the public interest.<sup>4</sup> The Commission has determined that the public interest is served when utility property is used for other productive

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<sup>3</sup> See Attachment B to SCE’s Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

<sup>4</sup> Section 853(a): “This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] ... shall apply to any public utility ... if the commission finds ... that the application of this article is required by the public interest.”

purposes without interfering with the utility's operations,<sup>5</sup> and such is the case here. There is in addition a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus lowering rates and at the same time enhancing the utility's financial health and the California economy. As discussed in the CEQA Considerations section above, the proposed use has been reviewed, its environmental impact assessed, and the project approved by the local jurisdiction. The lease agreement provides a host of provisions addressing lessee activities that could potentially impair the site's primary public utility use; informing the lessee of potential hazards; and reserving SCE's rights to fully access the site, to use the site for other compatible, productive purposes, and to reclaim the site if necessary. We conclude that the proposed lease is in the public interest and should be approved.

### **Procedural Considerations**

The Commission in Resolution ALJ 176-3088 preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code § 311(g)(2).

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<sup>5</sup> In D.93-04-019, p. 3, we observed: "Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

**Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and James McVicar is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Under terms of the lease, Park Edison's use of the site will not interfere with SCE's operations or facilities on the site.
2. All revenue from the lease in excess of a Commission-established threshold will be treated as OOR and shared 70%/30% between SCE and its ratepayers, pursuant to D.99-09-070.
3. The City of Stanton is the Lead Agency for the proposed project under CEQA, and the Commission is a Responsible Agency.
4. On May 1, 2002, the City adopted a final Negative Declaration finding that the proposed project would have a less than significant effect on the environment, and approved the project.
5. The City required application of local building code and subdivision standards as a condition of approval.
6. The Commission has reviewed and considered the information contained in the City's Negative Declaration for the project.
7. The City's Negative Declaration is adequate for the Commission's decision-making purposes.
8. We adopt the City's finding that the proposed project will have a less than significant effect on the environment. We also adopt the City's requirement that local building code and subdivision standards be applied as a condition of our approval.
9. There is no known opposition to granting the authorization requested.



**Conclusions of Law**

1. As a Responsible Agency under CEQA, the Commission must review and consider the City's Negative Declaration in making its decision.
2. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.
3. A public hearing is not necessary.
4. The Application should be granted as set forth in the following order.
5. This order should be made effective immediately to allow the lease to take effect and its benefits to begin flowing to SCE and its ratepayers as soon as possible.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison Company (SCE) is authorized to lease to Park Edison, LLC a site on SCE's Barre-Ellis and Del Amo-Ellis transmission right of way in City of Stanton, in accordance with the terms and conditions set forth in Application 02-04-048 and this order.
2. All revenue from the lease shall be treated as Other Operating Revenue and subject to the sharing mechanism set forth in Decision 99-09-070.
3. SCE shall notify the Director of the Commission's Energy Division in writing of any amendments to, extension of, or termination of the lease agreement, within 30 days after such amendments are executed.

4. Application 02-04-048 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.